SUBJECT INDEX

	Page
Citations to Opinions Below	2
Jurisdiction	2
Questions Involved	2-4
Statute and Rule Involved	4
Statement	4-5
Reasons for Granting the Writ	6-8
Conclusion	8
Appendix A Rule 52	9
Appendix B (Jones Act)	10

INDEX TO AUTHORITIES CITED

Petition of Den Norske Amerikalinje A/S, 276 F.Supp. 163 (1967)	5
Lake Shore & M.S. Ry. Co. v. Prentice, 147 U.S. 101 (1893)	7
The Linseed King, 285 U.S. 502 (1932)	6
States Steamship Co. v. United States, 259 F.2d 458 (1957)	6
United States v. United States Gypsum Co., 333 U.S. 364 (1948) ..	7
Rule 52(a) Federal Rules of Civil Procedure	7
U.S.C. Title 28, §688	4

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

UNITED STATES STEEL CORPORATION,

Respondent,

vs.

JEAN COOK, Administratrix of the Estate of CHARLES COOK, Deceased,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JEAN COOK, Administratrix of the Estate of CHARLES COOK, Deceased, petitions for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Sixth Circuit entered in the above entitled cause on March 7, 1969.

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court for the Northern District of Ohio, Eastern Division is reported in 276 F.Supp. 163. The opinion of the Court of Appeals for the Sixth Circuit is reported in 407 F.2d 1143.

JURISDICTION

The District Court decided the liability of Respondent on October 27, 1967. The Court of Appeals for the Sixth Circuit reversed on March 7, 1969. The jurisdiction of the Supreme Court to review this decision is conferred by Title 28, United States Code, Sections 1254 and 2101(c).

QUESTIONS INVOLVED

I.

When the United States Court of Appeals held that it was necessary for the evidence to establish that the Respondent know with certainty of the danger to the Petitioner's decedent, did it apply the wrong standard under 46 U.S.C. 688 (Jones Act) for ratification by an owner of an act of gross negligence by a master when

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there was clear evidence that the owner had specific and reliable knowledge of the fact that the ship would sink?

II.

When a corporation acts through its agents, do the actions of one very high in authority in the corporation, the master in this particular case, subject the corporation to punitive damages for the wanton and wilfull negligence of the master?

III.

May an owner be liable for wanton and wilfull negligence under 46 U.S.C. 688 (Jones Act) when it possesses instant control over a ship in perilous danger and when it has specific and reliable knowledge that the master of that ship is a careless and incompetent person?

IV.

Did the U. S. Court of Appeals misconstrue the "clearly erroneous" standard of F.R.C.P. 52(a) when it required that there be evidence that the owner know with certainty that the ship would sink when in fact -

(a) the owner had specific and reliable knowledge that the ship would sink

(b) the owner possessed means of instantly controlling the actions of the ship and saving lives, and

(c) the owner knew that the master was careless and incompetent yet refused to consult with or instruct him?

STATUTE AND RULE INVOLVED

Rule 52(a) of the Federal Rules of Civil Procedure and The Jones Act, 46 USCA §688 are set forth in Appendix A and B, respectively.

STATEMENT

Petitioner's decedent, CHARLES COOK, held the position of Third Mate aboard the Steamship Cedarville on May 7, 1965 when it collided in the Straits of Mackinac with the Norwegian Topdalsfjord. CHARLES COOK died along with nine shipmates when the Cedarville sank approximately 40 minutes after the collision.

Petitions for exoneration from or limitation of liability were filed by the owners of the two ships referred to and by the owner of a third ship, the Motor

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Vessel Weissenburg, which had been in close proximity to the collision. Those petitions were eventually all heard in the United States District Court for the Northern District of Ohio, Eastern Division, the trial court below. Pursuant to stipulation of the parties, judgment was entered against United States Steel, owner of the Cedarville (Respondent here) and Den Norske Amerikalinje A/S, owner of the Topdalsfjord, on the counts of exoneration and limitation. The owner of the Weissenburg was relieved of responsibility. Pursuant to the same stipulation, the count for punitive damages proceeded against U. S. Steel alone.

The trial court first decided the question of punitive damages. After that ruling, a Commissioner was to be appointed to determine the question of compensatory damages. On October 27, 1967, the trial court held Respondent liable to the Claimants (including Petitioner) for punitive damages. Petition of Den Norske Amerikalinje A/S, 276 F.Supp. 163 (1967)

Respondent took an appeal from that decision to the United States Court of Appeals for the Sixth Circuit which, on March 7, 1969, held that the findings of the District Court were clearly erroneous and reversed.

REASONS FOR GRANTING THE WRIT

1. The holding of the Court of Appeals that the owners of the Cedarville must have known with "certainty" that lives would be lost if the decisions of Captain Joppich were followed, before they were required to countermand those decisions, is contrary to the holding of this court in The Linseed King, 285 U.S. 502 (1932), and the holding of Ninth Circuit Court of Appeals in States Steamship Co. v. United States, 259 F.2d 458 (1957).

2. As a corporation can act only through its agents, the actions of those agents are, indeed, the actions of the corporation. The holding of the Court of Appeals that the actions of one of very high rank in the corporation must be ratified before the corporation can be liable for punitive damages ignores the fact that the evidence clearly established that all actions of a master of a ship are in effect ratified in advance by Respondent by its delegation of absolute control and authority to the master, and its steadfast refusal to interfere even when it had specific and reliable knowledge that the actions of the master are grossly negligent and will in fact lead to the death of persons under his command. The question is not, as the Court of Appeals has put it, whether the master should be in complete control: the question is whether that delegation of com-

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plete authority is in fact ratification of the results. In that respect, the holding of the Court of Appeals is in direct conflict with this court's decision in Lake Shore & M.S. Ry. Co. v. Prentice, 147 U.S. 101 (1893).

3. The finding by the Court of Appeals that there was no evidence that Captain Joppich was an unfit master is contrary to the uncontradicted testimony of the record, as of the time that the company officials learned of the order to beach the ship. It is of paramount importance to merchant seamen everywhere that the obligations of owners in a position of control when a ship is in perilous danger because of the incompetence of the master be clearly spelled out.

4. Although giving lip service to Rule 52(a) of the Federal Rules of Civil Procedure, the Court of Appeals misapplied the "clearly erroneous" standard of that rule in reweighing and rejecting findings based on the master's testimony, and in substituting its judgment for that of the trial court. This interpretation of "clearly erroneous" is in fact the adoption of the position that the Court of Appeals allegedly rejected, and constitutes the refusal to apply Rule 52(a). As such, the interpretation given Rule 52(a) by the Circuit Court of Appeals is in direct conflict with the opinion of this court in United States v. United States Gypsum

Co., 333 U.S. 364 (1948).

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: June 4, 1969

APPENDIX A

Rule 52

FINDINGS BY THE COURT

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

APPENDIX B
(Jones Act)

§ 688. Recovery for injury to or death of seaman

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. Mar. 4, 1915, c. 153, §20, 38 Stat. 1185; June 5, 1920, c. 250, §33, 41 Stat. 1007.